

To: JEN NY (victor@cheapoair.com)
Subject: TRADEMARK APPLICATION NO. 78740147 - CHEAPOAIR.COM - N/A
Sent: 4/30/2006 9:30:38 AM
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Attachments: [Attachment - 1](#)
[Attachment - 2](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/740147

APPLICANT: JEN NY

CORRESPONDENT ADDRESS:

JEN NY
213 W 35TH ST RM 1201
NEW YORK, NY 10001-1903

78740147

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: CHEAPOAIR.COM

CORRESPONDENT'S REFERENCE/DOCKET NO : N/A

CORRESPONDENT EMAIL ADDRESS:

victor@cheapoair.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/740147

The assigned examining attorney has reviewed the referenced application and determined the following.

STATUTORY REFUSAL(S)

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods/services, so resembles the mark in U.S. Registration No. **2890981** as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978). TMEP §§1207.01 *et seq.*

The goods/services of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some manner, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods/services come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). TMEP §1207.01(a)(i).

CHEAPAIR INC. is previously registered for "Travel agency services, namely making reservations and bookings for airplane transportation, car rentals and arranging cruises." The applicant seeks the exclusive right to use CHEAPOAIR.COM, a mark which is nearly identical to CHEAPAIR. The marks are clearly designed and intended to create the same commercial impression, meaning and connotation in the minds of potential purchasers for and end users of the identified services. Specifically, both marks create the impression of "air" as in "airfare" and the like which is "cheap" or very inexpensive. Consumers will undoubtedly recognize and call for the services of both parties by the same wording, and are at least likely to be confused, therefore, with respect to the source of or origin of the services they seek.

The mark is registered for the same services for which the applicant seeks registration. Both parties offer travel services and offer bookings for the same types of travel. The services of both parties are likely to be advertised through the same media and offered through the same channels of trade. Thus, the same consumers and consumer groups are likely to encounter the services of both parties, and consumer confusion regarding the source of the services encountered is highly likely. In this case, both the marks and the services are either identical or very similar. Thus, the Office must refuse registration pursuant to Trademark Act Section 2(d).

Finally, the examining attorney must resolve any doubt as to the issue of likelihood of confusion in favor of the REGISTRANT and against the applicant who has a legal duty to select a mark which is totally dissimilar to trademarks already being used. *Burroughs Wellcome Co. v. Warner & Lambert Co.* 203 USPQ 191 (TTAB 1979).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following.

GOODS/SERVICES/CLASSIFICATION/FEEES - INTERNATIONAL CLASS 39 ONLY

The recitation of services is unacceptable as indefinite because “vacations” is indefinite and could include or reference services outside of International Class 39. The applicant may adopt the following Class 39 recitation, if accurate: Travel services, namely making reservations and bookings for flights, car rentals, cruises, and tours.. TMEP §1402.11.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods or services that are not within the scope of the goods and services recited in the present identification.

/JMBK/
Jennifer M.B. Krisp
Attorney, Law Office 112
571-272-9183 [leave message]

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office’s Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney’s name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office’s Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office’s website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

Print: Apr 30, 2006

76537322

DESIGN MARK

Serial Number

76537322

Status

REGISTERED

Word Mark

CHEAPAIR INC.

Standard Character Mark

No

Registration Number

2890981

Date Registered

2004/10/05

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

American Travel Solutions, Inc. CORPORATION CALIFORNIA 16055 Ventura Blvd. #405 Encino CALIFORNIA 91436

Goods/Services

Class Status -- ACTIVE. IC 039. US 100 105. G & S: Travel agency services, namely making reservations and bookings for airplane transportation, car rentals and arranging cruises. First Use: 1994/02/01. First Use In Commerce: 1994/02/01.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE INC. APART FROM THE MARK AS SHOWN.

Filing Date

2003/08/14

Examining Attorney

SMIGA, HOWARD

Attorney of Record

Christa D. Perez

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CHEAPAIR INC.